

(1988) 11 PAT CK 0009
In the Patna High Court
Case No : Civil Revision No. 1945 of 1985

Anwar Ali

APPELLANT

Vs

Amirul Haque and Others

RESPONDENT

Date of Decision : 22-11-1988

Acts Referred:

Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956 — Section 3, 4(b), 4(c)

Citation : (1989) PLJR 579

Hon'ble Judges : B.K. Roy, J

Bench : Single Bench

Advocate : Nagendra Rai, Ajit Kumar, Ramakant Sharma, Dinu Kumar, Prashant Kr. and Bipin Bihari Singh, for the Appellant;

Final Decision : Dismissed

Judgement

Binod Kumar Roy, J.—In this civil revision application, by defendant no. 1, the only question involved is as to whether a suit for permanent injunction would also abate in view of section 4 (c) or the Bihar Consolidation of Holdings and Prevention of Fragmentation Act (hereinafter referred to as "the Act"), or whether the same would be not maintainable in view of section 4 (b) of the aforesaid Act. The portrayal of the relevant facts are short and simple. From the plaint, it is clear that the suit in question has been filed by the plaintiffs opposite parties 1 to 7 for granting a decree for permanent injunction restraining the petitioner from interfering in any manner with their possession over the properties described in Schedule II of the plaint and also for granting costs.

2. Mr. Nagendra Rai, learned counsel for the petitioner contends that the court below has illegally rejected the petitioner's petition dated 20.9.1985, filed under sections 4(b) and 4 (c) of the Act by completely misconceiving the legal position and incorrectly placing reliance on the decisions of the Orissa High Court reported in Duruju Mallik and etc. Vs. Krupasindhu Swain and Others etc., .

3. In my view the contentions made are devoid of substance.

4. A similar question had arisen before this Court in Civil Revision No. 1521 of 1985 (Sri Niwas Pradhan vs. Kesho Pradhan and others, disposed of on 27th October, 1987) in which B.P. Jha, J. (the then Acting Chief Justice) held as follows:-

The suit is for restraining the defendants from transferring the suit lands. It is neither a suit for declaration of title nor it is for recovery of possession. Such suit cannot be tried by the consolidation authority. Only the civil court can try such suit." In that case, the suit filed by the petitioner was for restraining the other side from transferring the suit lands which was held by the court below to have abated u/s 4 (c) of the Act and it was further held by this Court that that order was without jurisdiction. It is thus clear that it cannot be said that the impugned order suffers from any error.

5. In *Rahas Bewa vs. Kanduri Charan Sutar* (A.I.R. 1982 Orissa 48), a Division Bench of the Orissa High Court presided over by R.N. Mishra, J. (the then Chief Justice, now of the Hon"ble Supreme Court), categorically held that a suit for permanent injunction does not abate (vide paragraph 5 of the judgment). The same High Court, through its Full Bench in *Duruju Mallik and etc. Vs. Krupasindhu Swain and Others etc.*, , categorically held that a suit for permanent injunction does not abate under the provisions of Orissa Consolidation of Holdings and Prevention of Fragmentation Act. 1972, which is in pari materia with our Act and approved the ratio of the aforementioned Division Bench decision. I fully adopt the reasonings given by the majority judgment. I am also of the view that the publication of notification u/s 3 of the Act does not stand in the way of institution of a suit for permanent injunction. In the result, there is no merit in this application and it is dismissed accordingly but without costs since no one has appeared on behalf of the other side to oppose this application.